STATUTORY INSTRUMENTS

2016 No. 250

HARBOURS, DOCKS, PIERS AND FERRIES

The Dover Harbour (Constitution) Revision Order 2016

Made - - - -	*26th February 2016*
Laid before Parliament	*3rd March 2016*
Coming into force - -	*25th March 2016*

The Dover Harbour Board have applied in accordance with section 14(2)(a) of the Harbours Act 1964(**1**) ("the Act") for a harbour revision order under section 14.

The Secretary of State, as the appropriate Minister for the purposes of section 14, has by an order(**2**) under section 42A of the Act(**3**) delegated the functions of the appropriate Minister under section 14(**4**) to the Marine Management Organisation(**5**).

The Marine Management Organisation, being satisfied as mentioned in section 14(2)(b) and in exercise of the powers conferred by section 14(1) and (3), makes the following Order.

Citation and commencement

1.—(1) This Order may be cited as the Dover Harbour (Constitution) Revision Order 2016 and will come into force on 25th March 2016.

(2) The Dover Harbour Acts and Orders 1954 to 2014 and this Order may together be cited as the Dover Harbour Acts and Orders 1954 to 2016.

Interpretation

2. In this Order—

"the Board" means the Dover Harbour Board;

(**1**) 1964 c.40; section 14 was amended by the Transport Act 1981 (c.56), section 18 and Schedule 6, paragraphs 2 to 4(1) and 14 and section 40 and Schedule 12 (Part II), by the Transport and Works Act 1992 (c.42), section 63(1) and Schedule 3, paragraph 1, by S.I. 2006/1177, regulation 2 and the Schedule (Part I), by the Planning Act 2008 (c.29), section 36 and Schedule 2, paragraphs 8 and 9, by S.I. 2009/1941, article 2(1) and Schedule 1, paragraph 12 and by the Criminal Justice Act 1982 (c.48), sections 37 and 46. Section 54 (orders and regulations) was amended by the Transport Act 1981 (c.56), sections 18 and 40 and Schedules 6 and 12 (Part II) and by the Marine and Coastal Access Act 2009 (c.23), section 315 and Schedule 21, paragraphs 1 and 3(2).

(**2**) S.I. 2010/674.

(**3**) Section 42A was inserted, in relation to England and Wales, by the Marine and Coastal Access Act 2009 (c.23), section 315 and Schedule 21, paragraphs 1 and 3(1).

(**4**) For the definition of "the Minister" (mentioned in section 14(7)), see section 57(1).

(**5**) The Marine Management Organisation was established by the Marine and Coastal Access Act 2009 (c.23), section 1.

"director" means member of the Board;

"the Dover Port Users Group" means the body referred to in article 9(2)(b);

"harbour" means Dover Harbour and has the meaning given by section 4 of the Dover Harbour Consolidation Act 1954(**6**);

"the new constitution date" means 1st May 2016; and

"the Port & Community Forum" means the body referred to in article 9(2)(a).

New constitution

3.—(1) On and after the new constitution date, the Board shall consist of—

(a) one person appointed by the Secretary of State as the chair.

(b) two further persons appointed by the Secretary of State;

(c) four persons appointed by the Board;

(d) the chief executive of the Board; and

(e) one other senior officer employed by the Board as specified by the directors appointed under subparagraphs (a) to (d).

(2) No employee of the Board may be appointed a director under paragraph (1)(a), (b) or (c).

(3) Subject to article 4—

(a) no person is to be appointed by the Secretary of State as a director under paragraph (1)(a) unless he or she is recommended for appointment by a panel comprising the Board's deputy chair, such other director as may be determined by the Board, an official of the Department for Transport and an independent member to be agreed from time to time between the Board and the Secretary of State, and

(b) no person is to be appointed by the Secretary of State as a director under paragraph (1)(b) unless he or she is recommended for appointment by a panel comprising the Board's chair, the Board's deputy chair, an official of the Department for Transport and an independent member to be agreed from time to time between the Board and the Secretary of State.

(4) A recommendation by the panel under paragraph (3) must identify a candidate who satisfies the pre-determined and advertised criteria for the role and shall be made by a majority of the persons on the panel.

(5) Two of the directors appointed under paragraph (1)(c) must be persons who appear to the Board to have special knowledge or experience of the position of the harbour within the local community and local economy.

(6) Before any person is appointed as a director in accordance with paragraph (5) he or she must be interviewed by, and the Board must consult with, a panel comprising the Board's chair and three members of a committee of the Board to be known as the Nomination Committee, the chair of the Dover Port Users Group, the chair of the Port & Community Forum, one elected member of the Dover District Council, one elected member of Dover Town Council, the Member of Parliament for Dover and the chair of the South East Local Enterprise Partnership.

(7) If the office of chair of the Dover Port Users Group, the Port & Community Forum or the South East Local Enterprise Partnership falls vacant or the chair is unable to attend a meeting of the panel mentioned in paragraph (6), the body in question may nominate another member of the body to be the acting chair for the purposes of that paragraph; and the proceedings of the panel will not be affected by any vacancy among the members of the panel or any failure of a member to participate in the proceedings.

(**6**) 1954 c. iv.

(8) If the Board's deputy chair is unable to attend a meeting of the panel mentioned in paragraph (3)(a) or (3)(b) his or her place shall be taken by such other director as the Board may determine; and if the Board's chair is unable to attend a meeting of the panel mentioned in paragraph (3)(b) or (6) his or her place shall be taken by the Board's deputy chair or (in his or her absence) such other director as the Board may determine.

(9) If a body mentioned in paragraph (6) ceases to exist, the requirements for a person to be interviewed by, and the Board to consult with, the body shall be inapplicable as respects that body but those requirements shall apply as respects any body that the Board consider to be a successor to that former body.

(10) A director appointed under paragraph (1)(a) or (b) must be a person who appears to the Secretary of State, and a director appointed under paragraph (1)(c) (but without prejudice to the foregoing paragraphs) must be a person who appears to the Board, to have special knowledge, experience or ability appropriate to discharge the fiduciary duties of directors and contribute to the efficient, effective and economic discharge by the Board of their functions including in particular (but without prejudice to the generality of the foregoing) special knowledge or experience of, or ability in, one or more of the following matters—

(a) the ports industry;

(b) shipping or other forms of transport;

(c) navigation or marine operations;

(d) industrial, commercial or financial management;

(e) administration;

(f) safety and personnel management;

(g) environmental matters affecting harbours;

(h) strategic planning; or

(i) any other skills and abilities considered from time to time by the Secretary of State or, as the case may be, the Board to be relevant to the discharge of the Board's functions.

(11) Without prejudice to paragraphs (2) to (10), appointments under paragraph (1) or article 6 must be made in accordance with any guidance issued by the Secretary of State from time to time with respect to the appointment of Board members.

Appointment and terms of office of the first directors

4.—(1) Subject to paragraphs (2) and (3), the first appointments under article 3(1)(a), (b) and (c) must be made to take effect on, or as soon as reasonably practicable after, the new constitution date.

(2) The Secretary of State must appoint as the first chair of the Board as required by article 3(1)(a) the person who is the last Chairman of the Board before the new constitution date.

(3) The Secretary of State must appoint as first members of the Board under article 3(1)(b) the persons who are the two directors appointed before the new constitution date to hold office until 12 June 2018.

(4) The Board must appoint as first members of the Board under article 3(1)(c) the persons who are before the new constitution date respectively—

(a) the director appointed to hold office until 23 May 2016; and

(b) the director appointed to hold office until 30 September 2016.

(5) A director appointed under paragraph (2), (3) or (4) shall hold office until the date on which his previous period of office would have expired but for the making of this Order.

(6) The first two directors referred to in article 3(5) appointed by the Board under article 3(1)(c) shall hold office for a period of three years following their appointment.

(7) In the case of the first two directors mentioned in paragraph (6), consultation carried out by the Board as described in article 3(6) before the coming into force of this Order is to be taken to have been carried out under that provision.

(8) The senior officer appointed under article 3(1)(e) shall hold office as a director for such period as the Board may specify.

Terms of office of subsequent directors

5. A director appointed under article 3(1)(a), (b) or (c) (other than a director mentioned in article 4) shall, unless appointed to fill a casual vacancy, hold office for a period of three years following his or her appointment or for such lesser period as the Secretary of State or the Board (as the case may be) may specify.

Casual vacancies

6.—(1) A casual vacancy arising in the office of -

(a) a chair appointed by the Secretary of State under article 3(1)(a),

(b) a director appointed by the Secretary of State under article 3(1)(b), or

(c) a director appointed by the Board under article 3(1)(c),

(2) must, unless it is not reasonably practicable to do so, be filled by the appointment of a director by the Secretary of State or, as the case may be, the Board in accordance with article 3(2) to (11).

(3) The Secretary of State may fill a casual vacancy in the office of the chair by appointing as the chair a person who is already a director of the Board appointed under article 3(1)(b) or (c) and, if the Secretary of State does so, the appointment shall be deemed to create a casual vacancy in the office of the director who is appointed as the chair.

(4) A director appointed to fill a casual vacancy under this article shall, subject to paragraph 4 of the Schedule to this Order, hold office during the remainder of the term for which the director whom he or she replaces was appointed or such other period (not exceeding three years) as the appointing person or body may specify.

Appointment of a chief executive

7. For and incidental to the performance of their functions, the Board must appoint a chief executive.

Undertaking and declaration by directors

8. A director appointed by the Secretary of State or the Board must, before his or her appointment takes effect, sign an undertaking as to the discharge of the duties of a director and a declaration of interests in a form to be determined by the Board from time to time.

Advisory bodies

9.—(1) The Board must consult the advisory bodies specified in paragraph (2) on all matters which in the Board's reasonable opinion could substantially affect the management, improvement, conservation, protection or regulation of the harbour or navigation within it; but the Board is not required to consult on matters which in the Board's reasonable opinion are confidential or commercially sensitive or where it is not reasonably practicable to do so having regard to the urgency of the matter.

(2) The bodies referred to in paragraph (1) are—